

TMG

\$360

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Michael Whylings, Jr.
1904 Allwood Drive Apt. D
Bethlehem, PA 18018

Plaintiff,

vs.

FIA Card Services, N.A.
Mann Bracken, LLC
One Paces West, Suite 1400
2727 Paces Ferry Road
Atlanta, GA 30339

First Defendant,

and

Goldman and Warshaw, P.C.
312 West Broad Street
Quakertown, PA 18951

Second Defendant.

CIVIL ACTION

NO. **09 6005**

COMPLAINT

PARTIES

1. The Plaintiff is Michael Whylings, Jr., an individual with an address of 1904 Allwood Drive, Apt. D, Bethlehem, PA 18018 (hereinafter the Plaintiff).
2. The First Defendant is FIA Card Services, N.A., federally chartered bank with an address of Mann Bracken, LLC, one Paces West, Suite 1400, 2727 Paces Ferry Road, Atlanta, GA 30339.

3. The Second Defendant is Goldman and Warshaw, P.C., a law firm with an address of 312 West Broad Street, Quakertown, PA 18951

4. The Defendants are engaged in the collection of debts from consumers using mail and telephone. Defendants attempt to collect consumer debts alleged to be due another or debt assigned to it when in default. Defendants are debt collectors as defined the Fair Debt Collection Practices Act 15 U.S.C. § 1692a(6).

JURISDICTION

5. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. § 2201 and § 2202. Venue in this District is proper in that the Defendants transact business here and the conduct complained of occurred here.

FACTUAL ALLEGATIONS

6. On or before March 12, 2009, the Plaintiff was contacted by the law firm of Eichenbaum and Stylianou, LLC regarding a debt he allegedly owed MBNA.

7. The Plaintiff retained the law firm of Morris & Adelman, P.C. (hereinafter the Law Firm) to represent him, and the parties entered into negotiations.

8. On August 28, 2009, the Plaintiff received a demand letter from the law firm of Frederick J. Hanna & Associates on an account the Plaintiff allegedly owed to FIA Card Services, N.A. bearing the MBNA account number (a true and correct copy is attached as Exhibit "A").

9. The Law Firm faxed an inquiry to Frederick J. Hanna & Associates on August 31, 2009.

10. Frederick J. Hanna & Associates faxed a reply on September 1, 2009, stating they had checked with their client, Bank of America, and that they were handling the claim.

11. The Plaintiff and his law firm were confused and faxed a request for verification of the debt and the name of the original creditor. A true and correct copy of the letter is attached as Exhibit "B."

12. Half an hour prior to that letter being faxed, Frederick Hanna faxed a note stating that unless the Law Firm agreed to accept service, they would turn the file over to their local counsel. A true and correct copy of that fax is attached as Exhibit "C."

13. On October 9, 2009, the Second Defendant made demand on the Plaintiff, and a true and correct copy of that demand is attached as Exhibit "D."

CLAIM FOR RELIEF

14. The Plaintiff incorporates by reference paragraphs one through 13 above.

15. The Second Defendant violated the FDCPA by attempting to collect this debt after the Plaintiff made demand for verification, in violation of 15 U.S.C. § 1692g(b).

16. The First Defendant is a debt collector and having employed the Second Defendant, is responsible for all violations of the FDCPA done by the Second Defendant.

17. The Second Defendant violated 15 U.S.C. § 1692c(a)(2) by communicating with the Plaintiff directly after it knew or should have known he was represented by an attorney.

18. The First Defendant violated 73 P.S. § 2270.4(b)(2)(ii) by communicating directly with the Plaintiff by its law firm after it knew that the Plaintiff was represented by an attorney.

19. The First Defendant, by retaining the Second Defendant to collect the debt after the Plaintiff made demand for verification, violated 15 U.S.C. § 1692g(b).

WHEREFORE, Plaintiff Michael Whylings, respectfully requests that judgment be entered against the Defendants for

- a) actual damages;
- b) statutory damages pursuant to 15 U.S.C. § 1692k;
- c) costs and reasonable attorney's fee pursuant to 15 U.S.C. § 1692k;
- d) declaratory judgment that the Defendant's conduct violated the Fair Debt Collection Practices Act;
- e) for such other and further relief as the Court may deem just and proper.

MORRIS & ADELMAN, P.C.

BY: 

Kenneth F. Carobus, Esquire
1920 Chestnut Street, Ste. 300
P.O. Box 30477
Philadelphia PA 19103-8477
(215)568-5621
Attorney for Plaintiff

VERIFICATION

Michael Whylings, states that he/she is Plaintiff

and that the facts set forth in the foregoing COMPLAINT

are true and correct to the best of his/her personal knowledge or information and belief, and that this statement is made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.



Dated: 11/18/2009

FREDERICK J. HANNA & ASSOCIATES, A.C.

Attorneys at Law

1427 ROSWELL ROAD
MARIETTA, GA 30062

FREDERICK J. HANNA
DENNIS E. HENRY
JAMES T. FREANEY
LOUIS R. FEINGOLD
MICHAEL S. PESKIN

TEL: (770) 916-9220
FAX: (770) 980-0528
TOLL FREE: (800) 450-6575
August 24, 2009

ROBERT A. WINTER
JOSEPH C. COOLING
SCOT D. GROGHAN
CLAYTON D. MOSLEY
S. LOUIS SCHIAPPA

MICHAEL J WHYLINGS JR
524 W MERCHANT ST
AUDUBON NJ 08106-1910

Re: FIA CARD SERVICES, N.A.

Reference: 74975999637162
Balance: \$32,345.52
File No: 09359257

Dear MICHAEL J WHYLINGS JR :

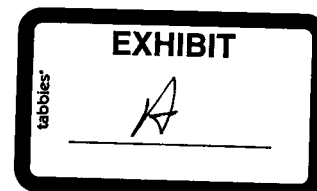
Please be advised that this law firm represents FIA CARD SERVICES, N.A. in its effort to collect your delinquent debt as shown above. Please contact our office to make arrangements to pay the unpaid balance.

Unless you notify this office within thirty (30) days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within thirty (30) days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a Judgment and mail you a copy of such Judgment or verification. If you request this office in writing within thirty (30) days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. However, if you fail to contact this office, our client may consider additional remedies to recover the balance due.

Sincerely,

Frederick J. Hanna & Associates



HOURS OF OPERATION ARE: MONDAY-FRIDAY 8AM-9PM EST
AND SATURDAY 8AM-1PM EST

" THIS IS A COMMUNICATION FROM A DEBT COLLECTOR "

MORRIS & ADELMAN, P.C.

JAMES W. ADELMAN
KENNETH F. CAROBUS
ROBERT M. MORRIS

COUNSEL TO THE FIRM
ROBERT M. REIBSTEIN

ROBERT I. MORRIS
1924 - 2004

1920 CHESTNUT STREET • SUITE 300
PHILADELPHIA, PA 19103-4620

215-568-5621
800-745-8058
FAX: 215-568-3253

SEND ALL U.S. MAIL TO:

MORRIS & ADELMAN, P.C.
P.O. BOX 30477
PHILADELPHIA, PA 19103-8477

E-mail: mail@morrisadelman.com

September 11, 2009

Frederick J. Hanna & Associates, P.C.
Attn: Frederick J. Hanna, Esquire
1427 Roswell Road
Marietta GA 30062

RE: FIA Card Services, N.A.
VS: Michael J. Whylings
Your File No. 09359257
Our File No. 90993

Dear Mr. Hanna:

We represent Michael Whylings and have been representing him since April of this year. In that month we corresponded with John Brigandi, Esquire of the law firm of Eichenbaum & Styllanou. They were your client's debt collector. We understand your client knew Mr. Whylings was represented by counsel. Nonetheless on August 24, 2009, you wrote directly to Mr. Whylings and made demand upon him. This is a violation of the Fair Debt Collection Practices Act. We demand you cease all communication with our client.

We are further somewhat bemused to see your letter alleges that the plaintiff's name is FIA Card Services, N.A. However, in your fax of September 1, 2009, you refer to your client, Bank of America. In accordance with the Fair Debt Collection Practices Act, we demand verification of this debt together with the name and address of the original creditor. If the original creditor is no longer MBNA, may we have the documentation (assignment, merger, etc.) whereby FIA Card Services N.A., became the creditor in this matter. At this point we cannot even make an offer to you because we do not know if you actually represent a creditor of our client.

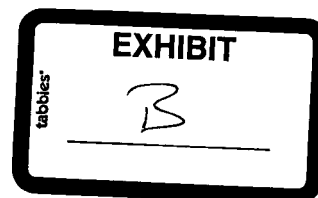
If you have any questions on this, please feel free to contact us.

Very truly yours,

JAMES W. ADELMAN

JWA/dac

cc: Michael J. Whylings



TRANSMISSION VERIFICATION REPORT

51117

TIME : 09/21/2009 12:18
 NAME : JAMES ADELMAN
 FAX : 215-568-2872
 TEL : 2155682872
 SER.# : 000E6J321154

adj/close DATE, TIME 09/21 12:18
 FAX NO./NAME 17709800528
 DURATION 00:00:00
 PAGE(S) 00
 RESULT BUSY
 MODE STANDARD
 .00 .00

BUSY: BUSY/NO RESPONSE

LAW OFFICES

MORRIS & ADELMAN, P.C.

1920 CHESTNUT STREET • SUITE 300
 PHILADELPHIA, PA 19103-4620

215-568-5621
 800-745-8058
 FAX: 215-568-3253

JAMES W. ADELMAN
 KENNETH F. CAROBUS
 ROBERT M. MORRIS

COUNSEL TO THE FIRM
 ROBERT M. MORRIS

ROBERT I. MORRIS
 1924 - 2004

SEND ALL U.S. MAIL TO:

MORRIS & ADELMAN, P.C.
 P.O. BOX 30477
 PHILADELPHIA, PA 19103-8477

E-mail: mail@morrisadelman.com

adj/close

September 11, 2009

27.30 Frederick J. Hanna & Associates, P.C.
 Attn: Frederick J. Hanna, Esquire
 1427 Roswell Road
 Marietta GA 30062

.00 .00

RE: FIA Card Services, N.A.
 VS: Michael J. Whylings
 Your File No. 09359257
 Our File No. 90993

61507

Dear Mr. Hanna:

adj/close We represent Michael Whylings and have been representing him since April of this year. In that month we corresponded with John Brigandi, Esquire of the law firm of Eichenbaum & Stylianou. They were your client's debt collector. We understand your client knew Mr. Whylings was represented by counsel. Nonetheless on August 24, 2009, you wrote directly to Mr. Whylings and made demand upon him. This is a violation of the Fair Debt Collection Practices Act. We demand you cease all communication with our client.

46.01

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FREDERICK J. HANNA & ASSOCIATES, P.C.

Attorneys at Law

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1427 ROSWELL ROAD
MARIETTA, GA 30062

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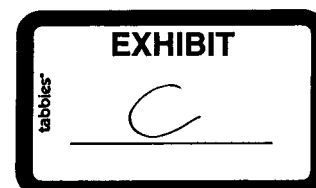
ROBERT A. WINTER
JOSEPH C. COOLING
SCOT D. GROGHAN
CLAYTON D. MOSLEY
S. LOUIS SCHIAPPA

MEMORANDUM

DATE: September 21, 2009
TO: James W. Adelman
Via Fax (215) 568-3253
FROM: Frederick J. Hanna
RE: Michael J. Whylings
Our File #09359257

We have not heard from you. Please advise if you will accept service of process for your client. If not, we will have local counsel serve your client. Please advise by Thursday, September 24, 2009.

FJH/jh



New Jersey Office:
34 Maple Ave, Ste 101
Pine Brook NJ 07058
(973) 439-0077

Mailing Address:
P.O. Box 2500
West Caldwell, NJ 07007-9897

GOLDMAN & WARSHAW, P.C.
ATTORNEYS AT LAW

Reply to New Jersey Office:
P.O. Box 2500
West Caldwell, NJ 07007-9897
877-733-1113
Fax 973-439-7204
www.gwpayonline.com

October 9, 2009

New York Office:
Doing Business in New York as
Goldman, Warshaw & Parrella
10 Oakland Avenue, Ste 2-4
PO Box 597
Warwick, NY 10990

Pennsylvania Office:
312 W. Broad Street
Quakertown, PA 18951

NYC DCA. LIC 1251927

MICHAEL J WHYLINGS JR
524 W MERCHANT ST
AUDUBON NJ 08106-1910

File: H0099290
Debtor: MICHAEL J WHYLINGS JR
Creditor Number: 74975999637162

Dear MICHAEL J WHYLINGS JR:

This law firm has been retained by FIA CARD SERVICES, N.A. for resolution of the above listed obligation. According to our client, you have an outstanding debt owed to them in the amount of \$32,345.52. Please feel free to contact Cheryl Wyble at ext. 125 or Sonia Ortiz at ext. 138.

Unless you notify this office within 30 days after receiving this notice that you dispute the debt or any portion thereof, then this office, a debt collector, will assume the debt to be valid. If you notify us in writing within the 30 day period that the debt or any portion thereof is disputed, we will obtain verification of the debt or a copy of a judgment and mail it to you. In the event that the name of the creditor is different from the original creditor and you, within the 30 day period, in writing, request the name and address of the original creditor, we will provide that to you.

FEDERAL LAW REQUIRES US TO INFORM YOU THAT THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

~~Goldman & Warshaw, P.C.~~
~~Attorney For Creditor~~

BY: _____
Gerard Di Popolo, Esq.

✂ ---If you choose to do so, feel free to use the coupon below or visit us at www.gwpayonline.com--- ✂

- () Check enclosed in the amount of \$_____, please apply towards my balance for the file H0099290
- () Please contact me at _____ (telephone).
- () I would like to offer \$_____ as a settlement. I will contact your office to further discuss my offer.

